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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No 74-266

STANLEY V. TUCKER,

Petitioner

-v-

DAVID T. WIGGINS, ET AL

Respondents.

PETITIONER'S REPLY BRIEF TO OPPOSITION BY THE APPELLEES

STANLEY V. TUCKER
Petitioner
Box 35
Hartford, Conn 06101

IN THE
SUPREME COURT OF THE UNITED STATES
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PETITIONER'S REPLY BRIEF TO OPPOSITION BY APPELLEES TO PETITION FOR CERTIORARI

Pursuant to Rule 24 (4) of the Rules for The Supreme Court the Petitioner replies to the Opposition by Appellees

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Introduction : The brief filed by the Appellees is highly misleading in all points raised and lacking in authorities in form of case law in the support thereof.

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ARGUMENT

I. CASES CITED BY APPELLEES ARE MISQUOTED AND DO NOT SUPPORT THEIR ARGUMENT

Under Point I appellees contend that a bond filed in the district court of Connecticut does not meet the cost bond requirements on appeal. Yet there are no known cases construing this exact point. Indeed the broad and simple language of Local Rule 7 of the District Court of Connecticut (see Page 9 of the Petition For Certiorari) leads to no other conclusion but that the cost bond is applicable to all costs including appellate.

All known cases construing district court cost bonds are based on the CONDITION or NECESSITY for Appellees to move the court on motion with notice for any added or increased costs. This same requirement exists in Local Rule 7 and was disregarded by the Appellees:

Local Rule 7: "....Added security... may be ordered by the court.... for good cause..... on motion duly noted"

In this action in the district court this Petitioner contends that the Appellees violated Local Rule 7 by:

1. fallure to move for added costs
2. failure to show "good cause"
3. failure to properly "notice" the motion by a failure to mail the motion to correct appellate address

I A. APPELLEES ERRONIOUSLY CONTEND THAT CENTRAL MFG CO V B.M.K. CORP 160 F SUPP 318 STANDS FOR THEIR FIRST POINT THAT COST BOND DID NOT COVER APPELLATE COSTS

Central Mfg Co, supra, a 1958 case stands for the opposite argument; namely that a cost bond filed in the appellate court did not cover costs in the district court

This argument apparently valid in 1958 has not the slightest application to this action.

The rule applicable in 1958 namely FRCP Rule 73 c has limiting language that was displaced by the FEDERAL RULES OF APPELLATE PROCEDURE, Rule 7, in 1968 which contains substantial introductory language to the effect that prior undertakings should suffice unless ordered otherwise by the court.

FRAP RULE 7 :"Unless an appellant... has filed .... other undertaking...."

This clear and explicit language is read to mean that the other undertaking filed by Petitioner in this action under Local Rule 7 is adequate and exempts Petitioner from further cout bond requirements in the court of appeal unless required by order of the court.

I B . APPELLEES ERRONIOUSLY CONTEND THAT MAILING OF NOTICE TO THE ADDRESS IN DISTRICT COURT MET DUE PROCESS OF THE APPELLATE COURT

Contrary to the argument Point II of Appellee's Brief the FRAP contain a very specific requirment.

FRAP RULE 32 (a): "The front cover of briefs and appendices shall contain:

(5) the names and address of counsel representing the party"

The application of FRAP Rule 32 a and not the District Court local rules governs due process in the appellate courts. Mailing to any other address as was done by the Appellees is unjust and unjustified and a DENIAL OF NOTICE and a DENIAL OF DUE PROCESS.

The distirct court has no jurisdiction while the case is on appeal and any forms filed remain there gathering dust until the case comes down on Order of Remand. The FEDERAL RULES OF APPELLATE PROCEDURE make this crystal clear.

FRAP RULE 1 (a): "These rules govern Procedure in appeals to the United States Courts of Appeal....."

I C. APPELLEES ARE WRONG IN POINT III AS COURTS OF APPEAL UNIFORMLY HOLD AN APPEAL MAY BE DISMISSED FOR FAILURE TO COMPLY WITH A COURT ORDER TO POST A COST BOND

The cases cited by Appellees do not hold nor has this Petitioner found any cases that the failure to post a cost bond on appeal is grounds for automatic dismissal. All cases found uniformly hold that an order must first be made for posting of added cost bond on appeal and then time given for compliance, usually 10 days. If not complied with then

on motion duly noticed and with hearing had the Appellate Court can dismiss the appeal for FAILURE TO COMPLY WITH THE ORDER but not for failure to post bond under the rule.

In fact the very cases cited by the Appellees make this crystal clear.

MacNeil Bros Co v Felix Forte et al
253 F 2d 501

at F 501: "we dismissed the appeals.... upon failure of this same appellant to file a bond..... after we had ordered the same to be filed"

Indeed reading of the cases cited there were many violations of rules on appeal as a factor in those dismissals.

This appellant had complied with all the rules and indeed his record complete and his Brief on file when the dismissal took place.

CONCLUSION:

The Brief in Opposition clearly shows that the Appellees have no defenses to this Petition and no merit to their position. The Petition should be summarily granted and the cases remanded for further proceedings consistent with the FEDERAL RULES OF APPELLATE PROCEDURE and with the rulings and orders of this Honorable Court.

Respectfully Submitted:

By_____
STANLEY V. TUCKER

AFFIDAVIT OF SERVICE BY MAIL

State of Connecticut)
County of Hartford) ss

I, STANLEY V. TUCKER, DO HEREBY STATE that on the 18th of November 1974 I served three copies of the within Petitioner's Reply Brief on the Appellees by mailing postage prepaid first class by depositing in the U S mails at Hartford, Conn addressed as follows:

Richard Cosgrove, Esq.
550 Main St
Hartford, Conn06003

David Della-Bitta Esq
30 Trinity Place
Hartford, Conn 06115

Edward Cowles
686 Park St
Hartford, Conn 06103

David T. Wiggins
79 Elm St
Hartford, Conn 06115

James P. Herlihy
550 Main St
Hartford, Conn 06103

Richard Woodhall
79 Elm St
Hartford, Conn 06115

James P. Gory
550 Main Street
Hartford, Conn 06101

Dated: Nov 18th, 1974

By Stanley V. Tucker
STANLEY V. TUCKER

Sworn to and subscribed
to before me Nov. 18, 1974

Notary Public William Storey
My commission expires MY COMMISSION EXPIRES MARCH 31, 19